



Force Majeure- No one size fits all

APRIL 13, 2020

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The decision of Bombay High Court in the case of Standard Retail Pvt. Limited & Ors. v. G.S. Global Corp & Ors.¹ firmly establishes that force majeure is not a case of “one size fits all”, even when evaluated in context of a global pandemic such as Covid-19. The decision came in the context of Section 9 petition under the Arbitration and Conciliation Act, 1996 filed before the court seeking directions to restrain negotiating banks from negotiating / encashing the letters of credit. The petition was filed by buyers in India, who had contracted to purchase of steel products from the suppliers from South Korea. The goods had already been shipped from South Korea and the court observed that the supplier had already performed its obligations under the contract.

Some key takeaways from the case:

- i. Letters of credit are an independent contract, performance of which will not be affected by underlying disputes between the buyers (the Petitioner) and seller. This clear statement and distinction made between the financing contract and the underlying dispute is very critical. It implies that even if the court had come to the view that the obligation of the buyer in the underlying contract stood suspended or terminated due to applicability of force majeure, the bank would be obliged to negotiate and pay the supplier against the letter of credit.
- ii. The relevant “force majeure” provision of the contract was unequivocally only for the benefit of the supplier and not the buyer. Therefore, the buyers could not rely on that clause for relief.
- iii. The court also held that the buyer’s financial difficulty with its own purchasers or damages it would suffer could not be considered and held against the supplier. This reinforces a very critical legal principle, although it is expected that financial hardship and business failure will be pushed prominently as grounds for seeking termination of contracts on basis of force majeure, in view of the court, economic distress cannot be the basis for permitting non-performance of the contract.
- i. The court also examined other facts, such as distribution of steel being declared as an essential service, the lockdown being only be a temporary measure etc. to hold that performance of the contract by the buyer could not be deemed to be affected by force majeure.

1. Commercial Arbitration Petition (L) No. 404 of 2020 decided on April 8, 2020.

The case underscores of some of the fundamental legal principles and aspects of the jurisprudence around force majeure. The applicability of force majeure is a function of the specific contracts and facts, including the nature of performance required and the duration and impact of the event on basis of which such relief is being claimed.

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